

REMARKS

Claims 1-13 are presently pending. The specification has been amended.

Applicants respectfully request reconsideration of the application in view of the foregoing amendment and the remarks appearing below, which Applicants believe place the application in condition for allowance.

Objection to the Specification

The Examiner has objected to the specification under 37 C.F.R. § 1.75(d)(1) and MPEP § 608.01(o) as failing to provide antecedent basis for the claimed invention. In particular, the Examiner states that "cowl 12" in line 6 of amended paragraph [0014] submitted in the Response filed on July 6, 2004 conflicts with "cowl 27" in line 5 of the same paragraph.

Applicants have amended paragraph [0014] herein to change "cowl 12" to "cowl 27" for consistency with the rest of the specification. As a result of this amendment, Applicants respectfully request that the Examiner withdraw the present objection.

Double Patenting Rejection

The Examiner has reiterated the rejection of claims 1-13 under the judicially created doctrine of obviousness-type double patenting in view of claims 1-6 of U.S. Patent No. 6,629,382, which issued from the parent application of the present application.

As the Examiner acknowledges in the Present Office Action, Applicants submitted a Terminal Disclaimer on July 6, 2004, in response to this rejection when first made in the Office Action of April 7, 2004. In the present Office Action, the Examiner indicated that the previously filed Terminal Disclaimer will be processed in due course.

Since Applicants believe that the previously submitted Terminal Disclaimer is sufficient to overcome the present rejection, it is Applicants' position that no further action by the Applicants is necessary at this time.

Based on the prior submission of the Terminal Disclaimer, Applicants respectfully request that the Examiner withdraw the present rejection of claims 1-13.

Rejection Under 35 U.S.C. § 103

The Examiner has again rejected claims 1-13 under 35 U.S.C. § 103 as being obvious in view of Japan publication number 10075691 to Sugamata, U.S. Patent No. Des. 131,494 to Pontis and U.S. Patent No. 5,048,223 to Yamamoto et al., stating that Sugamata discloses a fishing rod having all of the limitations of these claims except a semi-cylindrical cowl forming a continuation of a rod handle and a sleeve overlapping a reel seat body. The Examiner then asserts that Pontis and Yamamoto et al. disclose these features and further asserts that it would have been obvious to a person having ordinary skill in the art at the time of the invention to provide Sugamata's rod with the cowl and sleeve disclosed by Pontis and Yamamoto et al.

In supporting the continuance of this rejection, the Examiner states that Applicants have not provided any evidence that the term "up-locking" is a well-known term in the art. The Examiner also states that the term "up-locking" can be considered "to be having the locking rings above the reel since the locking is taking place above the reel and the same rational could be applied to down-locking." Applicants respectfully disagree with the rejection and also to the Examiner's position that the term "up-locking" does not have a well-established meaning in the fishing rod art.

The Term "Up-Locking" is Indeed Well Known in the Art

First, as a procedural matter, Applicants respectfully assert that the Examiner has improperly placed the burden of showing that the term "up-locking" is indeed a well-known term in the art that describes a very particular type of fishing rod reel lock.

Applicants assert that it is not an applicant's burden to show that claim terminology in fact has an ordinary and customary meaning in the relevant art. Rather, when an examiner questions whether claim terminology has a certain meaning in the art, it is the Examiner's burden to provide evidence that an applicant has not used terminology in a manner consistent with the well-known meaning.

For example, section 706.03(d) of the MPEP states that form paragraph 7.34.02 should be used when making a rejection based on terminology being used inconsistently with its accepted meaning. Form paragraph 7.34.02 and excerpts from the corresponding Examiner Notes read as follows:

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. The term “[1]” in claim [2] is used by the claim to mean “[3]”, while the accepted meaning is “[4].” The term is indefinite because the specification does not clearly redefine the term.

Examiner Note:

1. In bracket 3, point out the meaning that is assigned to the term by applicant's claims, taking into account the entire disclosure.
2. In bracket 4, point out the accepted meaning of the term. Support for the examiner's stated accepted meaning should be provided through the citation of an appropriate reference source, e.g., textbook or dictionary.

MPEP § 706.03(d) (citation omitted) (emphasis added.). While the situation at hand is a bit different from the situation addressed by MPEP § 706.03(d) in that the Examiner has not asserted that Applicants' use of "up-locking" is inconsistent with the well-known meaning of this term, Applicants believe that the foregoing excerpt of the MPEP illustrates that the Examiner must have evidence to support a position taken on the meaning of claim terminology.

That said, Applicants submit herewith, and attached hereto, a Declaration of Mr. Alan Gnann, president of REC Components, a longtime manufacturer of high-quality fishing rod components and accessories. In the Declaration, Mr. Gnann states that the terms "uplocking" and "downlocking" have distinct and precise meanings in the relevant art. In particular, Mr. Gnann states that the term "uplocking" indeed has the well-known meaning that Applicants have been asserting all along, i.e., that "uplocking" refers to the movement of a lock, e.g., a nut, up the rod, i.e., away from the butt end of the rod, while locking a reel into place. Likewise, Mr. Gnann states that the term "downlocking" in the context of fishing rods is well known to specifically refer to the movement of a lock, e.g., a nut, down the rod, i.e., toward the butt end of the rod, while locking a reel into place. Further, Mr. Gnann states that it is well known in the art that an "uplocking reel lock" is reel lock in which the lock, e.g., nut, is located between the butt end of the rod and the reel seat, and a "downlocking reel lock" is a reel lock in which the lock is located between the reel seat and the tip of the rod.

The Rejection

With the foregoing well-known meanings of the terms "up-locking," "down-locking" "up-locking reel lock" and "down-locking reel lock" in mind, Applicants respectfully assert that claims 1-13 are not obvious in view of the cited combination for at least the reasons discussed below.

Sugamata discloses a down-locking fishing rod (1), i.e., a fishing rod having a grip (7) and a reel (R) that is locked in place on a reel seat (generally, 9) using a nut (not labeled) that engages threads (not labeled) adjacent the grip, which is located distal from the butt end of the rod. To secure the reel, the nut is turned so that it moves relative to the reel seat in a direction toward the butt end of the rod (i.e., toward the left in the figure the Examiner provided in the present Office Action). This nut forms part of the down locking reel lock. It is noted that the terms "down" and "up" have particular meanings well known in the art. "Down" refers to the direction toward the butt end of the rod and "up" refers to the direction away from the butt end. The reel seat is located down the rod from the grip.

Pontis discloses an ergonomic grip for a fishing rod. The grip includes contours that conformally receive various portions of a user's hand. A reel seat is located up the rod from the grip. The Pontis fishing rod is essentially a down locking rod in which the reel (not shown) is secured to the rod by turning a knob (unlabeled) located at the upper end of the reel seat so that a lock (not labeled) moves downward relative to the rod. The grip includes a bulbous portion that appears to be provided to accommodate the thumb of a user during use.

Yamamoto et al. disclose a down locking fishing rod having a handle that consists of a first grip member (13) located proximate the butt end of the rod and a second grip member (14) located up the rod from the first grip member. Regarding the down locking nature of the fishing rod, note the threads (12c) in FIG. 2. The reel seat (reel mounting member 12) is located up the rod from the first grip member and down the rod from the second grip member. The first grip member has a portion (13') that extends over the reel seat opposite the reel and appears to be provided to accommodate the upper region (relative to the up direction of the rod) of a user's palm during use.

In contrast to each of the Sugamata, Pontis and Yamamoto et al. fishing rods, and any combination thereof, claims 1-13, as previously amended, are directed to a cowl and fishing rod handle particularly configured for an up-locking fishing rod, wherein the cowl comprises a semi-cylindrical body that extends down the rod, i.e., toward the butt end of the rod. First, not one of the Sugamata, Pontis and Yamamoto et al. fishing rods is an up-locking rod. Therefore, none of these fishing rods include an up-locking reel lock as required by each of amended independent claims 1, 5 and 9.

Second, none of the Sugamata, Pontis and Yamamoto et al. fishing rods has a cowl that extends down the rod, as required by each of amended independent claims 1, 5 and 9. The Sugamata rod does not include any structure that could be considered a cowl, let alone a cowl extending down the rod. The Pontis rod discloses a bulbous portion that extends up the rod, i.e., away from the butt end of the rod. The Yamamoto et al. patent discloses a first grip member having a portion that extends up the rod, again, away from the butt end of the rod. Therefore, even if one were to use either the Pontis or Yamamoto et al. grip with the Sugamata rod, the extending portions would extend up the rod, not down the rod as is the case with the present invention.

In this connection, Applicants further assert that the Pontis and Yamamoto et al. grips are specifically designed to be grips extending away from the butt end of the rod in order to accommodate portions of a user's hand located distal from the butt. It simply would not make sense to orient them the opposite way so that the extensions extend down the rod since the respective rods are not designed to be gripped in this manner. In contrast, the cowl of the present invention is designed to engage the portion of a user's hand proximate the butt end of the rod. Consequently, Applicants assert that the only motivation to change the orientations of the Pontis and Yamamoto et al. grips is hindsight motivation based on the present claims. Of course, this sort of motivation is improper in formulating obviousness-type rejections.

Third, Applicants assert that those skilled in the art would not be motivated to make the combination asserted by the Examiner. This is so because the Sugamata publication is directed to a fishing rod having a telescope attached thereto opposite the reel. Locating the telescope as shown obviates the need and, more generally, eliminates the possibility of having any sort of

extension located over the reel seat opposite the reel, as is the case with the cowl of the present claims. This is so because the Sugamata telescope would interfere with a user attempting to grip the fishing rod in the manner contemplated by the present invention. Therefore, there is no need for the cowl of the present invention on the Sugamata rod. Consequently, Applicants assert that someone skilled in the art simply would not be motivated to make the present combination. No support has been provided for the assertion that knowledge generally available to one of ordinary skill in the art provides a teaching, suggestion or motivation to combine references. Therefore, the combination is improper, and so no prima facie case for obviousness has been made, as is required for a rejection under 35 U.S.C. § 103.

For at least the foregoing reasons, Applicants assert that independent claim 1, 5 and 9, and claims 2-4, 6-8 and 10-13 that depend therefrom, are not obvious in view of the asserted combination. Therefore, Applicants respectfully request that the Examiner withdraw the present rejection.

Conclusion

In view of the foregoing, Applicants respectfully submit that claims 1-13, as previously amended, are in condition for allowance. Therefore, prompt issuance of a Notice of Allowance is respectfully solicited. If any issues remain, the Examiner is encouraged to call the undersigned attorney at the number listed below.

Respectfully submitted,

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Attachment

Declaration of Mr. Alan Gnann

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